

REFERENCE TITLE: public records; electronic format; fees

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

# **SB 1305**

Introduced by  
Senator Tibshraeny

AN ACT

AMENDING SECTIONS 39-121.01, ARIZONA REVISED STATUTES; RELATING TO PUBLIC RECORDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2       Section 1. Section 39-121.01, Arizona Revised Statutes, is amended to  
3 read:

4           39-121.01. Definitions: maintenance of records; copies,  
5           printouts or photographs of public records;  
6           examination and furnishing of public records; fees

7       A. In this article, unless the context otherwise requires:

8           1. "Officer" means any person elected or appointed to hold any  
9 elective or appointive office of any public body and any chief administrative  
10 officer, head, director, superintendent or chairman of any public body.

11          2. "Public body" means ~~the THIS~~ state, any county, city, town, school  
12 district, political subdivision or tax-supported district in ~~the THIS~~ state,  
13 any branch, department, board, bureau, commission, council or committee of  
14 the foregoing, and any public organization or agency, supported in whole or  
15 in part by monies from ~~the THIS~~ state or any political subdivision of ~~the~~  
16 ~~THIS~~ state, or expending monies provided by ~~the THIS~~ state or any political  
17 subdivision of ~~the THIS~~ state.

18          B. All officers and public bodies shall maintain all records,  
19 including records as defined in section 41-1350, reasonably necessary or  
20 appropriate to maintain an accurate knowledge of their official activities  
21 and of any of their activities ~~which THAT~~ are supported by monies from ~~the~~  
22 ~~THIS~~ state or any political subdivision of ~~the THIS~~ state.

23          C. Each public body shall be responsible for the preservation,  
24 maintenance and care of that body's public records, and each officer shall be  
25 responsible for the preservation, maintenance and care of that officer's  
26 public records. It shall be the duty of each such body to carefully secure,  
27 protect and preserve public records from deterioration, mutilation, loss or  
28 destruction, unless disposed of pursuant to sections 41-1347 and 41-1351.

29          D. Subject to section 39-121.03:

30           1. Any person may request to examine or be furnished copies, printouts  
31 or photographs of any public record during regular office hours or may  
32 request that the custodian mail a copy of any public record not otherwise  
33 available on the public body's ~~web-site~~ WEBSITE to the requesting person.  
34 The custodian may require any person requesting that the custodian mail a  
35 copy of any public record to pay in advance for any copying and postage  
36 charges. The custodian of ~~such THE~~ records shall promptly furnish ~~such THE~~  
37 copies, printouts or photographs and may charge a COPYING fee if the  
38 facilities are available, except that public records for purposes listed in  
39 section 39-122 or 39-127 shall be furnished without charge. UNLESS A  
40 SPECIFIC STATUTORY PROVISION AUTHORIZES HIGHER OR ADDITIONAL FEES, COPYING  
41 FEES SHALL NOT EXCEED THE ACTUAL COST OF REPRODUCTION, INCLUDING THE COSTS OF  
42 THE EQUIPMENT, MAINTENANCE AND PERSONNEL TIME ASSOCIATED WITH REPRODUCING THE  
43 PUBLIC RECORDS, BUT NOT INCLUDING PERSONNEL TIME ASSOCIATED WITH SEARCHING  
44 FOR, RETRIEVING, REVIEWING OR REDACTING THE PUBLIC RECORDS. THE CUSTODIAN

1 SHALL NOT IMPOSE A FEE FOR INSPECTING PUBLIC RECORDS UNLESS OTHERWISE  
2 PROVIDED FOR BY STATUTE.

3       2. If requested, the custodian of the records of an agency shall also  
4 furnish an index of records or categories of records that have been withheld  
5 and the reasons the records or categories of records have been withheld from  
6 the requesting person. The custodian shall not include in the index  
7 information that is expressly made privileged or confidential in statute or a  
8 court order. This paragraph shall not be construed by an administrative  
9 tribunal or a court of competent jurisdiction to prevent or require an order  
10 compelling a public body other than an agency to furnish an index. For the  
11 purposes of this paragraph, "agency" has the same meaning prescribed in  
12 section 41-1001, but does not include the department of public safety, the  
13 department of transportation motor vehicle division, the department of  
14 juvenile corrections and the state department of corrections.

15      3. If the custodian of a public record does not have facilities for  
16 making copies, printouts or photographs of a public record ~~which~~ THAT a  
17 person has a right to inspect, ~~sueh~~ THE person shall be granted access to the  
18 public record for the purpose of making copies, printouts or  
19 photographs. The copies, printouts or photographs shall be made while the  
20 public record is in the possession, custody and control of the custodian of  
21 the public record and shall be subject to the supervision of ~~sueh~~ THE  
22 custodian.

23      4. IF THE CUSTODIAN MAINTAINS PUBLIC RECORDS IN AN ELECTRONIC FORMAT,  
24 THE PUBLIC RECORDS SHALL BE AVAILABLE FOR INSPECTION OR COPYING IN THE FORMAT  
25 DESIGNATED BY THE REQUESTING PERSON IF THE PUBLIC BODY MAINTAINS THE PUBLIC  
26 RECORDS, INCLUDING DATA AND INFORMATION MAINTAINED IN DATABASES IN THAT  
27 FORMAT. THE CUSTODIAN MAY TRANSFER ELECTRONIC RECORDS TO A MORE PROTECTED  
28 FORMAT BEFORE DISCLOSURE OR USE PROCESSES TO ENSURE THAT THE INFORMATION  
29 PROVIDED IS SECURE. THE CUSTODIAN MAY IMPOSE A REASONABLE FEE FOR PROVIDING  
30 ELECTRONIC COPIES OF PUBLIC RECORDS. THE FEE SHALL BE LIMITED TO THE ACTUAL  
31 COST OF REPRODUCING THE PUBLIC RECORD AND THE COST OF THE MEDIA USED TO  
32 DISTRIBUTE THE PUBLIC RECORD. IN ADDITION, THE CUSTODIAN MAY IMPOSE A  
33 REASONABLE FEE FOR THE ACTUAL COST ASSOCIATED WITH RESPONDING TO CUSTOMIZED  
34 SEARCHES AND AD HOC REQUESTS FOR DATA MAINTAINED IN DATABASES IF THE LABOR  
35 ASSOCIATED WITH SEARCHING, SELECTING AND FORMATTING THE DATA REQUESTED  
36 EXCEEDS TWO HOURS. IF THE CUSTODIAN DETERMINES IT IS NOT FEASIBLE TO PROVIDE  
37 ACCESS TO ELECTRONIC RECORDS FOR INSPECTION, THE CUSTODIAN SHALL PROVIDE A  
38 PAPER COPY OF THE PUBLIC RECORD OR INFORMATION REQUESTED AT NO CHARGE FOR  
39 INSPECTION ONLY. ANY PAPER COPIES RETAINED BY THE REQUESTING PERSON ARE  
40 SUBJECT TO A COPYING FEE. IF THE CUSTODIAN DETERMINES THAT PROVIDING  
41 ELECTRONIC COPIES OF PUBLIC RECORDS IS NOT FEASIBLE, THE CUSTODIAN SHALL  
42 PROVIDE A PAPER COPY OF THE PUBLIC RECORD OR INFORMATION OR A COPY IN ANOTHER  
43 MEDIUM THAT IS ACCEPTABLE TO THE REQUESTING PERSON AND MAY IMPOSE A  
44 REASONABLE COPYING FEE. IN ADDITION, ON REQUEST, THE CUSTODIAN SHALL PROVIDE  
45 THE REQUESTING PERSON WITH A WRITTEN EXPLANATION AS TO WHY IT IS NOT FEASIBLE

1 TO PROVIDE AN ELECTRONIC COPY. IF THE REQUESTING PERSON REQUESTS PAPER  
2 COPIES OF ELECTRONIC RECORDS, THE CUSTODIAN MAY IMPOSE A REASONABLE FEE THAT  
3 IS LIMITED TO THE ACTUAL COST OF PRINTING. THE CUSTODIAN MAY PROVIDE COPIES  
4 OF PUBLIC RECORDS IN A FORMAT NOT MAINTAINED BY THE PUBLIC BODY, CREATE A  
5 PUBLIC RECORD OR CONVERT PAPER PUBLIC RECORDS TO ELECTRONIC FORMAT AND MAY  
6 CHARGE A REASONABLE FEE FOR DOING SO, INCLUDING A FEE FOR PERSONNEL TIME.

7 E. Access to a public record is deemed denied if a custodian fails to  
8 promptly respond to a request for production of a public record or fails to  
9 provide to the requesting person an index of any record or categories of  
10 records that are withheld from production pursuant to subsection D, paragraph  
11 2 of this section.

12 Sec. 2. Requirements for enactment; two-thirds vote

13 Pursuant to article IX, section 22, Constitution of Arizona, this act  
14 is effective only on the affirmative vote of at least two-thirds of the  
15 members of each house of the legislature and is effective immediately on the  
16 signature of the governor or, if the governor vetoes this act, on the  
17 subsequent affirmative vote of at least three-fourths of the members of each  
18 house of the legislature.